Equality of Opportunity and Freedom from Discrimination

Opportunités égales et inclusivité

THE MANITOBA **HUMAN RIGHTS** COMMISSION

LA COMMISSION DES **DROITS DE LA PERSONNE** DU MANITOBA

The Manitoba Human Rights Commission and Human Rights Adjudication Panel

ANNUAL REPORT 2015

MANITOBA HUMAN RIGHTS COMMISSION

The Manitoba Human Rights Commission is an independent agency of the Government of Manitoba and is responsible for administering *The Human Rights Code* ("*The Code*"). The Commission is a resource for all Manitobans with respect to discrimination and human rights issues in Manitoba and across the country.

The Commission takes complaints of discrimination, investigates them and determines if there is sufficient evidence that *The Code* has been contravened to warrant a public hearing of the complaint. At those hearings, the Commission represents the public's interest in eliminating discrimination and ensuring employers, landlords, service providers and landlords comply with their obligations under *The Code*.

The Commission offers mediation services as part of the complaint process and conducts human rights education programs across the province. The Commission has offices in Winnipeg and Brandon.

The Commission is comprised of ten Commissioners appointed to represent the geographic, cultural, social and economic profile of Manitoba and twenty-one staff led by an Executive Director. The Commission reports to the Minister of Justice.

The fundamental principle underlying *The Code* is recognition of the individual worth and dignity of every person. The rights and responsibilities set out in *The Code* ensure that we have equal opportunities and are not discriminated against on the basis of any of the following characteristics:

- ancestry, including colour and perceived race;
- nationality or national origin;
- ethnic background or origin;
- religion or creed, or religious belief, religious association or religious activity;
- age;
- sex, including sex-determined characteristics, such as pregnancy;
- gender identity;
- sexual orientation;
- marital or family status;
- source of income;
- political belief, political association or political activity;
- physical or mental disability including reliance on a service animal, wheelchair or other remedial appliance or device; and
- social disadvantage.

Discrimination, harassment and retaliation against a person who enforces their rights under *The Code* is prohibited in areas such as employment, housing, public services, contracts, and in signs and notices.

ATTORNEY GENERAL
MINISTER OF JUSTICE

Room 104
Legislative Building
Winnipeg, Manitoba CANADA
R3C 0V8

The Honourable Janice C. Filmon, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg, MB R3C 0V8

May it Please Your Honour:

I have the privilege of presenting for the information of Your Honour the Annual Report of The Manitoba Human Rights Commission and Human Rights Adjudication Panel for the calendar year 2015.

Respectfully submitted,

Heather Stefanson
Minister

THE MANITOBA
HUMAN RIGHTS
COMMISSION

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

The Honourable Heather Stefanson
Minister of Justice and Attorney General
Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

Pursuant to section 6(2) of *The Human Rights Code*, we are pleased to provide you with the Annual Report of the Manitoba Human Rights Commission and the Human Rights Adjudication Panel for the calendar year 2015.

Yours sincerely,

Yvonne Peters
Chairperson
Board of Commissioners

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THE MANITOBA **HUMAN RIGHTS** COMMISSION

LA COMMISSION DES **DROITS DE LA PERSONNE** DU MANITOBA

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CHAIRPERSON'S MESSAGE

The release of the Truth and Reconciliation Commission (TRC) of Canada's 94 Calls to Action in June and the final report in December was the beginning of a movement in Canada. 2015 will be remembered as the year we began the reconciliation process with Indigenous peoples to redress the legacy of residential schools.

The Commission responded to the Calls to Action by launching a multi-year consultation to inform our work in promoting and protecting the rights of Manitobans to be free from discrimination based on ancestry, race or national origin. It was agreed that the first step in this project would be to meet with Elders, to listen and to be thoughtful.

The annual Commitment Award honoured the reconciliation work that is already happening in our province. Manitoba artist Kathleen Noëlle Black designed a beautiful glass feather of the Great Grey Owl for the award, which was presented to Meet Me at the Bell Tower – a grassroots Winnipeg organization that has worked towards reconciliation between Indigenous peoples and others in Manitoba.

The Commission also began the process of developing a three year strategic plan that will amongst other things, incorporate the Calls to Action and re-design the Commission's education strategy to provide accessible human rights education to all areas of Manitoba.

As a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), the Commission continues to work with human rights agencies across the country. I was pleased to take on the role of Vice President of CASHRA in 2015 and to initiate an inter-jurisdictional Working Group on discrimination related to the use of service animals. I am pleased to report that Manitoba continues to be at the forefront of many human rights issues such as gender identity and service animals and that other Commissions also actively look to Manitoba as a model with respect to our mediation process and education initiatives.

Early in 2015 the Board was pleased to welcome Diane Dwarka to the Board of Commissioners.

On behalf of all of the Commissioners, I would like to thank Commission staff for their dedication, expertise and commitment to furthering human rights in Manitoba. I extend my sincere thanks and best wishes to Azim Jiwa, Executive Director, who left the Commission in mid-December 2015 for new opportunities; and to Isha Khan, Legal Counsel, who stepped into the role to carry the Commission forward into 2016.

Yvonne Peters
Chairperson
Board of Commissioners

EXECUTIVE DIRECTOR'S MESSAGE

As Acting Executive Director, I have looked back at our activities and accomplishments in 2015. In 2015 we took time to reflect on our statutory mandate as an independent agency responsible for administering *The Human Rights Code* in Manitoba. Not only did this prompt us to begin developing a three year strategic plan, it set the stage for us to further streamline our complaint process and develop the work under our education mandate.

The Commission saw much success in its education programs this year. We delivered our regular human rights seminar program throughout the year, and we were also able to respond to increasing demand from the public to conduct on-site, human rights education in workplaces.

Late in 2015 we closed our office in The Pas to centralize our education programs out of our main office in Winnipeg and began developing a comprehensive education strategy that will enable us to direct resources to reach all areas of the province. The seminars offered in Northern Manitoba were particularly well-received, making it clear that we must continue to find new and innovative ways to educate Manitobans, especially youth.

Representing the public's interest before the Human Rights Adjudication Panel, the Commission took strong positions on the remedial objectives of *The Code* at several hearings convened under section 37.1 of *The Code* to consider the reasonableness of a respondent's settlement offer. The Commission continues to assert the fundamental importance of the protections in *The Code* and successfully argued in *Horrocks v. Northern Regional Health Authority*, that a person who has been discriminated against ought to be "made whole" to the extent possible, which in that case resulted in the first-ever award of reinstatement by a Human Rights Adjudication Panel in Manitoba.

Finally, the Commission continues to lead the public on emerging issues such as discrimination against persons who use service animals. We wrapped up our public consultation by releasing a final report and recommendations. Our resources to assist the public in navigating this issue are an example for other jurisdictions and have resulted in increased awareness of this issue across the country.

I would like to thank each and every staff member for their dedication and commitment to continually strive to better serve the public. With their knowledge and passion for human rights, we are well positioned to focus our strategic priorities in 2016 on **raising our profile as the primary resource for the public on human rights, further developing our education mandate and establishing public service standards in our complaint process**. We are well on our way to administering our statutory mandate with greater efficiency. Your teamwork and professionalism this past year is much appreciated. Thank you also to our Commissioners. Your guidance and direction has been invaluable.

Isha Khan
A/Executive Director & Counsel

Commission Honours Human Rights Work in the Community

To honour the release of the Truth and Reconciliation Commission of Canada's 94 Calls to Action, the Commission along with event partners, Manitoba Association of Rights and Liberties and the Canadian Human Rights Commission, awarded the annual Commitment Award to a person or group who has contributed to reconciliation between Indigenous peoples and others in Manitoba. Meet Me at the Bell Tower, a grassroots community movement that brings young people together at the bell tower on Selkirk Avenue and Powers Street to discuss neighbourhood issues was the recipient of the Commitment Award at the 11th annual award ceremony to mark International Human Rights Day.

Christie Mcleod is presented with the Sybil Shack Youth Award by MARL's Executive Director, Michelle Falk.

Meet Me at the Bell Tower with Christie McLeod

Christie McLeod was honoured as the recipient of the Sybil Shack Human Rights Youth Award that recognizes exceptional young people under 25 years of age that advocate for human rights locally and abroad, for her work establishing the Human Rights Hub, an innovative website about human rights events, and on Shoal Lake 40 First Nation, sex trafficking, and women's rights.

Reinstatement Ordered as Human Rights Remedy

For the first time in Manitoba, in September 2015 an adjudicator ordered an employer found to have discriminated against their employee to reinstate the employee to work with backpay and seniority.

Linda Horrocks filed a complaint with the Commission alleging that the Northern Regional Health Authority (NRHA) had discriminated against her on the basis of her disability, being an addiction to alcohol. Horrocks was suspended from work for smelling like alcohol. She admitted to struggling with alcohol use and was willing to seek treatment, but NRHA refused to let her return to work in a personal care home in Flin Flon, Manitoba unless she agreed to complete abstinence, at and outside of work. Before she could return to the workplace, NRHA terminated her employment based on reports from co-workers who thought Horrocks had been drinking. Horrocks denied that she had been drinking, but had no way of proving it. Her union did not grieve the termination of employment and she filed her complaint with the Commission.

The Commission argued that NRHA had not acted reasonably because it did not consider the input of the woman's addictions counselor or any other treating professional in setting her return to work conditions. The Commission took the position that an employer must always consider safety, and in the case of addictions an abstinence requirement may certainly be appropriate in some cases, but not without assessment of the individual needs of the employee.

NRHA was ordered to pay Horrocks $10,000 in compensation for injury to her dignity, self respect and feelings, and on receiving clearance to return her to work from an addictions expert ordered that she be reinstated with backpay for the more than 3 years that she had been out of the workplace.

Adjudicator Walsh dismissed NRHA's arguments that Horrocks should not have pursued her complaint through the Commission and should have utilized the grievance process,

Continued on page 7

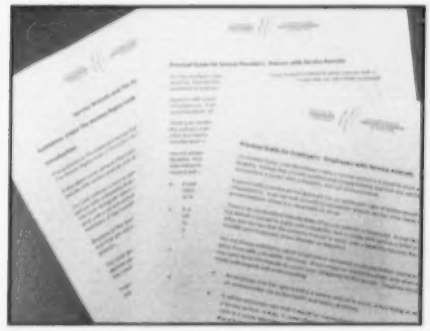
accepting jurisdiction to determine the complaint. NRHA applied for a judicial review of the decision maintaining that unionized employees must pursue their human rights complaints through the grievance process and cannot elect to file a complaint with the Commission.

"It is important to recognize that it constitutes discrimination for an employer to rely on personal experiences and common place assumptions or stereotypes rather than on objective assessments when determining an accommodation plan for an employee who has a disability. Unfortunately I find such discrimination occurred in this case."- Chief Adjudicator, Sherri Walsh- *Horrocks v. Northern Regional Health Authority*

Commission Develops Public Resources on Service Animals

In February 2015, the Commission released the Service Animal Consultation Report which summarized the findings from the three public consultations held in Winnipeg and Brandon in the fall of 2014. The consultations were held in response to growing confusion about the use of service animals in workplaces, housing, restaurants and other public places. The Commission sought information from service animal users as well as employers, landlords and service providers about their experiences and respective challenges.

Manitobans made it clear that they wanted tools to assist them in ensuring that service animal users are not discriminated against. The Commission has since developed resources available on its website to assist the public that explain how "service animal" is defined in *The Human Rights Code*. These materials explain that persons with disabilities who use service animals have the right to access any place accessed by others



Newly developed resources are all available on the Commission's website, www.manitobahumanrights.ca

and that employers, landlords and service providers should handle accommodation requests from service animal users in the same way they would any other disability-related need. The Commission has since continued to raise awareness around the use of service animals and comfort/therapy animals by persons with disabilities and the responsibilities of service animals users in public spaces and accepted invitations to speak about this emerging issue to schools, health inspectors, the housing industry, and the hospitality tourism industry. Coffee chats were also held in Winnipeg and Brandon to discuss the rights and responsibilities surrounding service animals.

Streamlining the Complaint Process

In 2015, the Commission piloted a project that would enable complainants to draft their own complaints rather than having Intake staff assist in editing a complainant's statement to formally articulate their complaint. Enquiries from the public to Intake staff were in line with previous years however greater emphasis was put on offering parties opportunities to resolve their issues before the complaint is registered. In 2015, these opportunities to mediate were well received by parties especially because of the increased wait time to assign investigators to complaints. Greater emphasis on early resolution, combined with training and operational efficiencies have been successful in reducing the overall time it takes to investigate complaints and have resulted in more standardized analyses of issues. In 2015, 145 complaints were considered by the Board of Commissioners, of which 22 were found to be substantiated and referred to the Human Rights Adjudication Panel and the remainder were dismissed because of a lack of evidence, or because they were outside the Commission's jurisdiction or deemed frivolous or vexatious.

Proving Discrimination Based on Pregnancy Remains Challenging

In May 2015, an adjudicator dismissed a complaint by a woman alleging she was discriminated against under *The Code* when her employer terminated her employment shortly after learning that she was pregnant.

Audrey Blatz held a senior executive position with 4L Communications Inc. and had been rewarded for her hard work in financial compensation and other incentives. Shortly after she told her employer that she was pregnant and would have to limit her work hours, her employment was terminated. The Commission argued that her pregnancy was not the sole factor, but nonetheless a factor in the employer's decision to terminate. Adjudicator Robert Dawson was not, however, prepared to make this finding and instead accepted the employer's evidence that there were non-discriminatory reasons to terminate Blatz's employment.

> "Discrimination today is not overt and can be very subtle, regardless of whether it is based on pregnancy, ancestry or any of the other grounds *The Code* protects."- Yvonne Peters, Chairperson, Manitoba Human Rights Commission

The decision highlights the difficulty of proving discrimination in an evidence-based process, when discriminatory conduct is often subtle and nuanced, especially in the workplace. The Commission presented a similar complaint alleging discrimination based on pregnancy in the workplace by Andrea Szabo and against her former employer Cindy Dayman o/a Take Time Home Cleaning and Lifestyle Services before Adjudicator Dawson in July 2015.

Youth Conferences and Rights Rallies Emphasize Importance of Inclusion

Over 500 students and teachers attended the Commission's DREAM Youth Conferences for middle year students in Shilo and Winnipeg or Rights Rallies in Thompson. Part of the Commission's education programs, these events are designed to promote equality and understanding amongst young people through candid discussions about important human rights issues, such as gender identity and sexual orientation. Conference Guest speaker, Scott Heggart from "You Can Play" and Winnipeg Blue Bomber ambassador, Teague Sherman sent a clear message to students and teachers that homophobia is never acceptable; on the sports field or in the locker room or hallway.

Athlete Scott Heggart, You Can Play, tells his personal story to raise awareness of homophobia in sport.

Sherman and Heggart with Commission staff and students and teachers from Alexander School.

Commission Takes Human Rights Seminar Program to Northern Manitoba

The Commission's education strategy in 2015 focused on providing human rights education to Northern Manitoba. Commission staff delivered seminars on general human rights principles and harassment in the workplace to employers in Thompson, with the promise to return to Thompson early in 2016 to deliver a full day of accommodation seminar, completing the Commission's regular seminar program. The Commission's Chairperson and Legal Counsel also travelled to The Pas to host an employment seminar for local employers. All Northern education initiatives were very well received and plans are underway to continue to develop the reach of the Commission's education programs across Manitoba.

Commission staff educate employers and industry professionals about harassment under The Code.

Commission Represents Public's Interest

Since 2012, members of the Human Rights Adjudication Panel have had the ability to assess whether or not a settlement offer made by a respondent is reasonable. Section 37.1 of *The Code* requires an adjudicator to terminate the adjudication proceedings if the respondent has offered the complainant remedies that approximate what the adjudicator appointed to determine the merits of the complaint would award if the complaint was proven to be true.

Section 37.1 mirrors the provision in *The Code* that gives similar authority to the Board of Commissioners at an earlier stage in the complaint process.

In two cases in 2015, the Commission took the position that a settlement offer rejected by the complainant was reasonable and that a public adjudication of the complaint would not be in the public's interest. In one case, the adjudicator appointed under section 37.1 determined that the offer approximated what an adjudicator hearing the complaint would order if the complaint was proven and in the other case, the adjudicator determined that he did not have enough information to find the respondent's offer to be reasonable.

The decisions in *Young v. Amsted Canada Inc.* and *Collete v. St. Adolpe Personal Care Home Inc. et al.* clarify the Commission's role in the complaint process as representing the public's interest in eliminating discrimination and securing the respondent's future compliance with *The Code* rather than representing the personal interests of the complainant alone. These decisions have been instrumental in confirming the unique nature and importance of the remedies available under *The Code* to put a person back in the position they would have been in, had they not been discriminated against.

La Commission rend hommage au travail en faveur des droits de la personne

Afin de souligner les 94 appels à l'action lancés par la Commission de vérité et réconciliation du Canada, la Commission des droits de la personne du Manitoba et ses partenaires, soient l'Association manitobaine des droits et libertés et la Commission canadienne des droits de la personne, ont décidé de remettre le Prix manitobain du dévouement à la cause des droits de la personne à un particulier ou à un groupe ayant contribué à la réconciliation entre les peuples autochtones et le reste de la population manitobaine. Lors de la 11e cérémonie de remise des prix annuels soulignant la Journée internationale des droits de l'homme, le Prix manitobain du dévouement à la cause des droits de la personne a été remis à Meet Me at the Bell Tower, un mouvement communautaire populaire qui invite les jeunes à se regrouper à la « tour de la cloche » à l'angle de l'avenue Selkirk et de la rue Powers, afin de discuter de thèmes comme la pauvreté, la criminalité et la violence.

Christie McLeod a eu l'honneur de remporter la Bourse Sybil Shack pour la promotion des droits de la personne par la jeunesse, qui récompense le travail exceptionnel de jeunes de moins de 25 ans qui contribuent à l'avancement des droits de la personne ici et ailleurs, pour avoir créé le Human Rights Hub, un site Web novateur qui porte sur les activités relatives aux droits de la personne ainsi que sur la Première Nation Shoal Lake 40, le commerce du sexe et les droits des femmes.

Michelle Falk, la directrice générale de l'Association manitobaine des droits et libertés, remet à Christie Macleod la Bourse Sybil Shack pour la promotion des droits de la personne par la jeunesse.

Meet Me at the Bell Tower et Christie MacLeod

Réintégration ordonnée comme mesure de réparation

En septembre 2015, un arbitre a ordonné à un employeur de réintégrer une employée dans ses fonctions avec rémunération rétroactive sans perdre de son ancienneté, après avoir établi qu'il avait fait preuve de discrimination à son égard. C'était une première au Manitoba.

Linda Horrocks a déposé une plainte auprès de la Commission en alléguant que l'Office régional de la santé du Nord (ORS du Nord) avait fait preuve de discrimination à son égard fondée sur son incapacité, à savoir une dépendance à l'alcool. Mme Horrocks avait été suspendue de son travail parce qu'elle sentait l'alcool. Elle a reconnu être aux prises avec des problèmes d'alcool et était prête à suivre un traitement, mais l'ORS du Nord s'est opposé à son retour au travail dans un foyer de soins personnels à Flin Flon (Manitoba) tant qu'elle ne se serait pas soumise à une abstinence complète au travail et à l'extérieur du travail. Avant qu'elle ne puisse retourner au travail, l'ORS du Nord a mis fin à son emploi en se fondant sur des rapports de ses collègues qui disaient qu'elle buvait. Mme Horrocks a nié qu'elle buvait, sans pouvoir toutefois le prouver. Son syndicat n'ayant pas contesté la cessation d'emploi, elle a déposé une plainte auprès de la Commission.

La Commission a fait valoir que l'ORS du Nord n'a pas agi de manière raisonnable, parce qu'il n'a pas tenu compte du point de vue du conseiller en toxicomanie de la femme ou de tout autre professionnel traitant en fixant ses conditions de retour au travail. La Commission était d'avis qu'un employeur doit toujours tenir compte de la sécurité, et que dans le cas d'une dépendance, l'obligation d'abstinence est sûrement envisageable dans certains cas, mais pas sans une évaluation au préalable des besoins individuels de l'employé(e) concerné(e).

L'ORS du Nord a été sommé de verser à M^me^ Horrocks 10 000 $ en dédommagement pour atteinte à sa dignité, à son estime de soi et à ses sentiments, d'obtenir un certificat de santé pour son retour au travail d'un expert en toxicomanie, et de la réintégrer dans ses fonctions avec traitement rétroactif pour la période de plus de trois ans pendant laquelle elle a été hors du marché du travail.

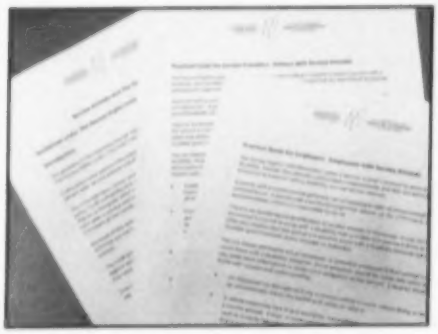
L'arbitre Walsh a rejeté l'argumentation de l'ORS du Nord voulant que M^me^ Horrocks n'aurait pas dû se tourner vers la Commission, mais plutôt recourir à la procédure de règlement des griefs et reconnaître ainsi sa compétence dans le traitement de sa plainte. L'ORS du Nord a demandé un examen judiciaire de la décision en soutenant que les employés syndiqués devraient faire entendre leurs plaintes relatives aux droits de la personne dans le cadre de la procédure de règlement des griefs plutôt que de les déposer auprès de la Commission.

« Il est important de comprendre qu'il y a discrimination lorsqu'un employeur se fie à des expériences personnelles et à des lieux communs ou à des stéréotypes plutôt qu'à des évaluations objectives au moment d'établir un plan d'adaptation pour un employé atteint d'une incapacité. Malheureusement, nous considérons qu'il y a eu discrimination dans le cas présent. » - Sherri Walsh, arbitre en chef - *Horrocks c. Office régional de la santé du Nord*

La Commission propose des ressources publiques concernant les animaux d'assistance

En février 2015, la Commission a publié son rapport de consultation publique sur les animaux d'assistance, qui résume les conclusions tirées des trois consultations publiques tenues à Winnipeg et à Brandon à l'automne 2014. Ces consultations publiques découlaient de la confusion croissante relativement à l'utilisation d'animaux d'assistance dans les lieux de travail, les lieux d'hébergement, les restaurants et d'autres endroits publics. La Commission s'est renseignée auprès de particuliers utilisant un animal d'assistance ainsi que d'employeurs, de locateurs et de fournisseurs de services au sujet de leurs expériences et de leurs problèmes respectifs.

Les Manitobains ont exprimé clairement leur désir de disposer d'outils pour s'assurer que les particuliers utilisant un animal d'assistance ne sont pas victimes de discrimination. Pour aider la population, la Commission propose depuis sur son site Web des ressources qui expliquent quelle est la définition d'« animal d'assistance » dans le *Code des droits de la personne*, que les personnes handicapées utilisant un animal d'assistance ont le droit d'aller partout où les autres personnes vont, et que les employeurs, les locateurs et les fournisseurs de services devraient répondre aux demandes des particuliers utilisant un animal d'assistance de la même façon qu'ils répondraient à tout besoin lié à une incapacité. La Commission poursuit aussi son travail de sensibilisation relativement à l'utilisation d'animaux d'assistance et d'animaux qui apportent du réconfort et de la compagnie aux personnes handicapées, ainsi qu'aux responsabilités des particuliers utilisant un animal d'assistance dans les endroits publics. La Commission a accepté les invitations à venir parler de ce nouvel enjeu dans des écoles et auprès des inspecteurs en santé publique et des personnes travaillant dans le secteur de l'hébergement et du tourisme. On a aussi organisé des cafés-causeries à Winnipeg et à Brandon pour discuter des droits et des responsabilités se rapportant aux animaux d'assistance.



Toutes les nouvelles ressources peuvent être consultées sur le site Web de la Commission, au www.manitobahumanrights.ca.

Simplification du traitement des plaintes

En 2015, la Commission a mis à l'essai un projet permettant aux plaignants de rédiger leurs plaintes eux-mêmes au lieu de demander au personnel à l'accueil de les aider à formuler leur déclaration officielle. Les requêtes du public auprès du personnel à l'accueil s'inscrivaient dans la lignée des années précédentes, mais on a davantage donné la possibilité aux parties de régler leurs différends avant le dépôt d'une plainte. En 2015, ces possibilités de médiation ont été bien reçues des parties, surtout en raison du prolongement du délai avant que les plaintes ne soient confiées à un enquêteur. En mettant davantage l'accent sur un règlement rapide, de pair avec une formation et des efficiences opérationnelles, on a réussi à réduire le temps requis pour examiner les plaintes, ce qui a permis de normaliser davantage les analyses des enjeux. En 2015, le Conseil des commissaires a examiné 145 plaintes, dont 22 ont été jugées fondées et transmises au Tribunal d'arbitrage des droits de la personne. Les autres plaintes ont été rejetées faute de preuves, parce qu'elles ne relevaient pas de la compétence de la Commission ou parce qu'elles ont été jugées frivoles ou vexatoires.

Toujours difficile de prouver la discrimination fondée sur la grossesse

En mai 2015, un arbitre a rejeté la plainte d'une femme qui disait avoir été victime de discrimination en vertu du *Code* après que son employeur eut mis fin à son emploi peu après avoir appris qu'elle était enceinte.

Audrey Blatz occupait un poste de cadre supérieur chez 4L Communications Inc. Elle avait déjà bénéficié d'une compensation financière et d'autres mesures incitatives pour son travail assidu. Peu après avoir annoncé à son employeur qu'elle était enceinte et qu'elle comptait réduire ses heures de travail, elle a perdu son emploi.

> « Aujourd'hui, la discrimination n'est pas évidente et peut être très subtile, qu'elle soit fondée sur la grossesse, l'ascendance ou tout autre motif protégé par le *Code*. » - Yvonne Peters, présidente, Commission des droits de la personne du Manitoba

La Commission avait soutenu que sa grossesse n'était pas le seul facteur en cause, mais un facteur tout de même dans la décision de l'employeur de mettre fin à son emploi. L'arbitre Robert Dawson n'est toutefois pas arrivé à cette conclusion et a accepté la preuve présentée par l'employeur pour expliquer que le congédiement de M^me^ Blatz ne reposait pas sur des motifs discriminatoires.

La décision fait ressortir la difficulté de prouver qu'il y a discrimination dans le cadre d'un processus fondé sur des données probantes, lorsque la conduite discriminatoire est souvent subtile et nuancée, plus particulièrement en milieu de travail. Une plainte similaire pour discrimination au travail fondée sur la grossesse avait été déposée par Andrea Szabo contre son ancien employeur Cindy Dayman et/ou Take Time Home Cleaning and Lifestyle Services, qu'a examinée l'arbitre Dawson en juillet 2015.

Les conférences des jeunes et les rallyes pour la défense des droits soulignent l'importance de l'inclusion

Plus de 500 élèves et enseignants ont participé aux conférences des jeunes DREAM qu'organise la Commission à l'intention des élèves des années intermédiaires à Shilo et Winnipeg, ou encore aux rallyes pour la défense des droits à Thompson. Ces activités, qui font partie des programmes d'enseignement de la Commission, visent à promouvoir l'égalité et la compréhension parmi les jeunes dans le cadre de discussions franches à propos de questions importantes relevant des droits de la personne, comme l'identité du genre et l'orientation sexuelle. Le conférencier invité, Scott Heggart du projet « You Can Play », ainsi que l'ambassadeur des Blue Bombers de Winnipeg Teague Sherman, ont lancé un message clair aux élèves et aux enseignants, à savoir que l'homophobie n'est jamais acceptable, aussi bien sur le terrain de sport qu'au vestiaire ou dans les couloirs.

L'athlète Scott Heggart, du projet « You Can Play », raconte son histoire personnelle pour sensibiliser les gens à l'homophobie dans le sport.

Teague Sherman et Scott Heggard en compagnie de membres du personnel de la Commission, d'élèves et d'enseignants de l'école Alexander.

Le programme de séminaires sur les droits de la personne de la Commission arrive au nord du Manitoba

En 2015, la stratégie d'enseignement de la Commission était axée sur l'enseignement des droits de la personne au nord du Manitoba. Le personnel de la Commission a alors présenté des séminaires sur les principes généraux relatifs aux droits de la personne ainsi que sur le harcèlement en milieu de travail à des employeurs à Thompson, en promettant de revenir au début de 2016 pour présenter un séminaire d'une journée entière portant sur les mesures d'adaptation, et compléter ainsi le programme de séminaires habituellement proposé. La présidente et la conseillère juridique de la Commission se sont également rendues à The Pas pour présenter un séminaire sur l'emploi à l'intention des employeurs locaux. Toutes les initiatives d'enseignement dans le Nord ont été très bien accueillies et des plans sont prévus pour continuer d'étendre la portée des programmes d'enseignement de la Commission.

Des membres du personnel de la Commission sensibilisent des employeurs et des professionnels de l'industrie au harcèlement tel qu'il est défini en vertu du Code.

La Commission représente l'intérêt public

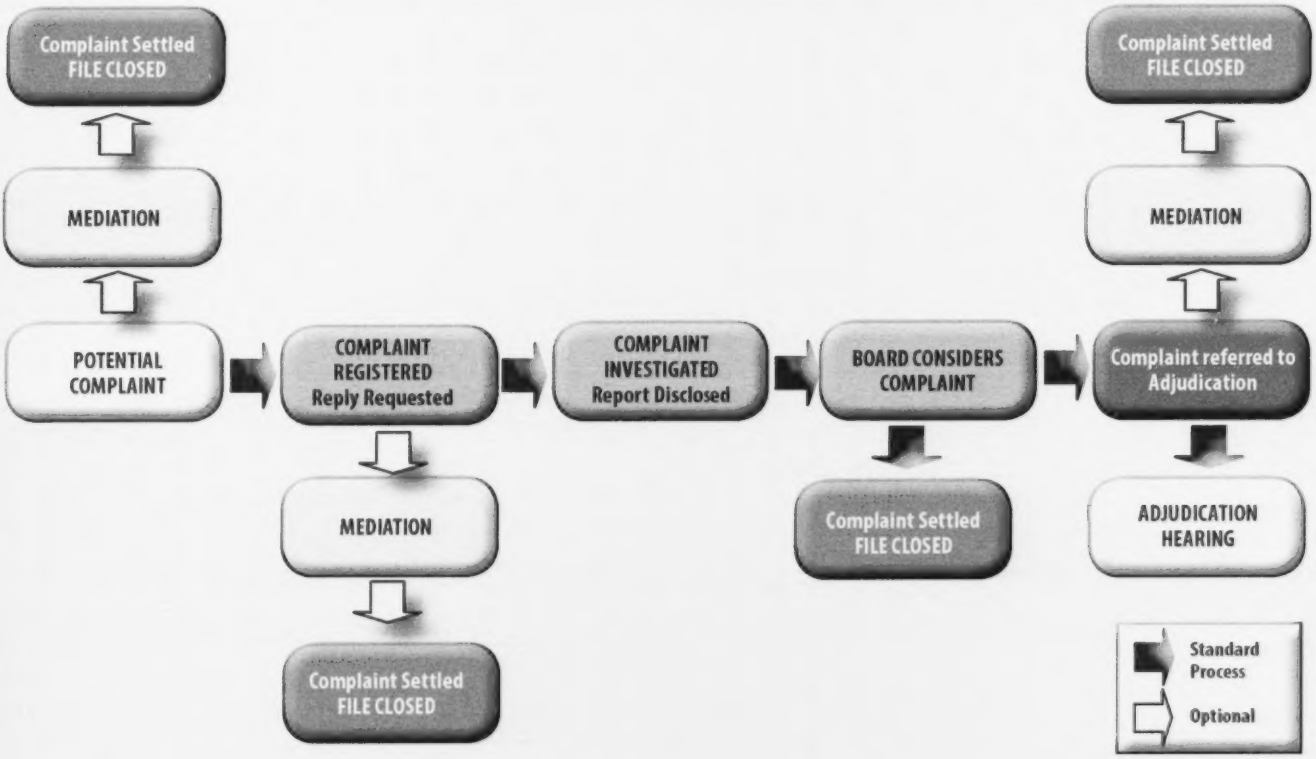
Depuis 2012, des membres du Tribunal d'arbitrage des droits de la personne ont la possibilité d'évaluer si une offre de règlement faite par un intimé est raisonnable ou non. L'article 37.1 du *Code* exige d'un arbitre qu'il mette fin aux procédures d'arbitrage si l'intimé a fait une offre de règlement au plaignant qui se rapproche de ce que l'arbitre nommé pour établir le bienfondé de la plainte accorderait si la plainte s'avérait fondée.

L'article 37.1 reprend les dispositions du *Code* qui accordent un pouvoir similaire au Conseil des commissaires plus tôt dans le processus de traitement des plaintes.

Dans deux cas en 2015, la Commission a établi qu'une offre de règlement rejetée au préalable par le plaignant était raisonnable, ce qui faisait en sorte qu'un règlement public de la plainte n'était pas d'intérêt public. Dans un des cas, l'arbitre nommé en vertu de l'article 37.1 a établi que l'offre correspondait à peu près à ce qu'un arbitre entendant la plainte aurait ordonné si la plainte s'avérait fondée. Dans l'autre cas, l'arbitre a jugé qu'il manquait de renseignements pour établir que l'offre de l'intimé était raisonnable.

Les décisions rendues dans *Young c. Amsted Canada Inc.* et dans *Collete c. St. Adolphe Personal Care Home Inc. et al.* clarifient le rôle de la Commission dans le processus de traitement des plaintes en tant que représentant de l'intérêt public à éliminer la discrimination et à s'assurer que l'intimé se conformera à l'avenir aux dispositions du *Code*, et non pas comme représentant des intérêts personnels du plaignant seulement. Ces décisions ont joué un rôle déterminant pour confirmer la nature unique et l'importance des voies de recours prévues dans le *Code* pour rétablir la situation dans laquelle se trouvait une personne avant d'être victime de discrimination.

THE COMPLAINT PROCESS – OVERVIEW



Intake

- The parties are offered an opportunity to resolve the complaint before the complaint is registered.
- Intake staff are a resource for the public about human rights and discrimination.
- Intake staff listen and refer to other agencies where appropriate.
- Intake staff assist in drafting a complaint that articulates how a person's rights under *The Code* have been violated.
- Intake staff forward the complaint to the Executive Director for registration. The complaint is then served on the respondent who has an opportunity to submit a formal reply to the complaint.

THE COMPLAINT PROCESS – OVERVIEW

Investigation

- Investigation staff are neutral and do not advocate for either party.
- Investigation staff investigate complaints to the extent necessary in order to recommend to the Commissioners to either dismiss the complaint or refer it to a public adjudication hearing.
- Investigation staff review and obtain documentation, conduct interviews of the parties and other relevant witnesses.
- Investigation staff prepare a comprehensive Investigation Assessment Report (IAR) that provides a summary of the evidence they have considered and an analysis of the evidence according to human rights law and principles.
- The IAR includes a recommendation as to whether or not the complaint should be dismissed or whether an independent adjudicator should be requested to make a final decision about the complaint.
- The IAR is provided to the parties and they are given an opportunity to provide a written submission to the Commissioners in response to the IAR.

Commissioners' Decision

- The Commissioners are decision makers that must follow administrative law principles of procedural fairness and natural justice.
- The Commissioners review the complaint, the reply to the complaint, the IAR and any submissions made by the parties.
- The Commissioners decide whether or not to dismiss the complaint or request that an independent adjudicator make a final decision about the complaint at a public adjudication hearing.
- The Commission provides the Chief Adjudicator with a copy of the complaint and reply to the complaint and requests that an independent adjudicator be appointed from the list of adjudicators.
- The parties are offered a final opportunity to resolve the complaint before an independent adjudicator is requested.

Public Adjudication Hearing

- The Commission is an independent party in the adjudication process that represents the public's interest in eliminating discrimination.
- The Commission is required by *The Code* to present the complaint and argue that the complainant has been discriminated against. The complainant and the respondent are entitled to hire their own lawyer but are not required to do so.
- The hearing process is similar to a court proceeding and is controlled by the Adjudication Panel.
- The Adjudication Panel is comprised of a single adjudicator, appointed by Government, who is not a Commission staff or Commissioner.
- The Adjudication Panel decides whether or not the complaint is proven or whether it should be dismissed. If it is proven, the Adjudication Panel will make an order to remedy the discrimination in accordance with *The Code*.
- The hearing is open to the public and the final decision is released in writing and also made public.
- The parties are encouraged by the Commission's counsel and/or the Adjudication Panel to engage in without prejudice discussions to resolve the complaint before the public adjudication hearing.

Intake

Intake staff provide service across Manitoba in-person, by phone or by email in English or French. Intake staff are also available to meet in-person in the Commission's Winnipeg and Brandon Offices. Staff are specifically trained in human rights and mediation skills.

Intake enquiries are typically from or on behalf of individuals who believe they have been discriminated against or from employers, landlords and service providers who want clarification or information to enable them to meet their obligations under *The Human Rights Code*. After some discussion, enquiries often result in referrals to other agencies if the issue is not one covered by *The Code*.

In 2015, Intake staff responded to 4083 requests for information, from which the Commission opened 342 files.

The Commission re-invigorated its pre-complaint resolution process which allows an opportunity for Intake staff to review open files and try and facilitate a voluntary resolution between the parties before a complaint is formally registered. This mediation process has been very successful especially for situations in which an individual requires an immediate remedy or some clarification of the rights and obligations under *The Code* is needed. In 2015, 18 files were resolved before a complaint was registered, 29 files were withdrawn or not pursued and the remaining 295 were registered by the Executive Director.

In 2015, the Commission implemented a pilot project to enable Intake staff to focus more of their time on pre-complaint resolutions and individuals to use their own words when making their complaint. The pilot project involved implementing new complaint forms that an individual could complete themselves rather than relying on Intake staff to edit and format. Intake Officers remained available to provide information and guidance on how to complete the forms. The Commission will evaluate the pilot project in 2016.

Example: The Complainant went off work on a sick leave. He alleged that his employer did not permit him to return to the workplace without a medical note indicating he was capable of doing all of his duties without limitations. The Complainant indicated that while he was able to return he did require some modified duties on a temporary basis until he fully recovered. After this concern was brought to the Respondent's attention they met with the Complainant and agreed to bring him back to work with duties which met his medical restrictions. The file was closed as both parties were satisfied with the resolution.

Investigation

Investigators are based in the Commission's Winnipeg and Brandon offices. Investigation staff are specifically trained in human rights but come to their position from a variety of backgrounds including law, social sciences, criminal justice, and labour relations and have well developed skills related to administrative law, and statutory interpretation.

In 2015, Investigation staff completed 145 Investigation Assessment Reports (IARs) and provided them to the Commissioners for consideration.

As part of the Commission's overall goal of reducing the delay in having a complaint assigned to Investigation staff, the Commission focused on optimizing resources to make investigations more efficient, including moving to phone interviews in most cases, renewing emphasis on early document review, issue identification and investigation plans, and implementing ongoing training. These measures have been successful in strengthening the Investigation team over the past year after a period of much staff turnover, more investigations were completed than in the previous year and projections are on track to considerably reduce wait times for the public in the investigations area in the year ahead.

THE COMPLAINT PROCESS

In 2015, once a file was assigned to an investigator the average length of investigation was 9.5 months. This time is calculated from the date the complaint is assigned to the date the Investigation Assessment Report (IAR) is disclosed.

Example: An investigator is asked to look into a complaint that alleges that a landlord failed to reasonably accommodate a tenant's special needs based on her disability by refusing to move her to another of the landlord's buildings. The investigator is provided with evidence that the tenant had given a medical note to her landlord, which stated she needed to be moved to another building because of a medical condition. The respondent provides the investigator with evidence that it had requested further information from the tenant regarding her needs and limitations. The complainant's doctor had clarified that the tenant required a suite that is quiet, spacious and bright. The evidence shows that the landlord took an inventory of the suites it had available, and then offered the tenant a suite at the back of the same building that was away from traffic and outside noise, that had more square footage than her original suite, and was south-facing. The investigator concludes that the landlord had reasonably accommodated the complainant's disability-related needs; had assessed what suites it had available, and offered her a suite that was in line with the tenant's special needs and recommends the complaint be dismissed.

Commissioners' Decision

The Board of Commissioners meet as a group approximately every 6 weeks to make decisions about whether or not complaints should be dismissed or referred to an independent adjudicator for a hearing.

In 2015, the Commissioners considered 145 IARs; dismissing 123 complaints and referring 22 to an independent adjudicator based on the evidence set out in the IAR.

The Commissioners routinely provide the parties with a final opportunity to try and resolve the complaint before an adjudicator is requested. In 2015, approximately half of the complaints that were found to be substantiated were resolved with the assistance of Mediation staff.

If mediation is not successful, the respondent to the complaint remains able to have the Commissioners assess whether or not the remedies included in a respondent's settlement offer are reasonable. An offer is considered to be reasonable if it approximates what an adjudicator would award if the complaint was proven to be true at a hearing. If the Commissioners determine that the respondent's offer is reasonable, they must terminate the complaint proceedings. In 2015, the Commissioners found 2 respondent offers to reasonably remedy the complaint and therefore terminated the complaint without the need to request an independent adjudicator to make a final decision.

Public Adjudication Hearing

The Commission has "carriage of the complaint" in adjudication proceedings, which means that the Commission's counsel is responsible for presenting the evidence to substantiate the complaint to the independent adjudicator. At this stage, the Commission is no longer neutral and represents the public's interest in eliminating discrimination by arguing that the complaints that the Commissioners have determined to be substantiated by sufficient evidence should be proven and that an appropriate remedy should be ordered.

In 2015, the Commissioners requested that an independent adjudicator be appointed to make a final decision about 6 complaints. In this year 5 complaints were resolved prior to the adjudication hearing, however some of those had been referred to adjudication in years previous to 2015.

The Commission brought on a second counsel in 2015 which has been valuable in ensuring that the adjudication process is timely and that, once it is determined that an adjudication of the complaint is appropriate, the parties can move to a hearing date as quickly as possible. Counsel have also been active preparing for hearings, motions and applications before the Court of Queen's Bench, all related to complaints referred by the Commission to adjudication.

In 2015, the Commission participated in a lengthy hearing in Flin Flon, Manitoba, *Horrocks v. Northern Regional Health Authority,* arguing that a woman with an addiction to alcohol was not reasonably accommodated by her employer and should be awarded compensation for injury to her dignity and reinstated to her workplace with backpay and seniority. Chief Adjudicator Sherri Walsh found that the complaint was proven and, for the first time in Manitoba, ordered reinstatement. Also in 2015, Adjudicator Robert Dawson issued a decision in *Blatz v. 4L Communications Inc.,* dismissing a complaint that alleged that a woman's employment was terminated, in part because of her pregnancy. The Commission took a similar position in *Szabo v. Dayman o/a Take Time Home Cleaning and Lifestyle Services;* however the decision was not issued in 2015.

The Commission's role therefore is to prove the complaint but also to request remedies that secure the respondent's future compliance with *The Code.* These remedies necessarily involve compensation for injury to dignity, feelings and self respect, and a change in policy or practice as well as human rights training. They often also involve compensation for lost wages or other financial loss as a result of the discrimination.

If the parties are not able to resolve the complaint prior to the adjudication hearing, similar to the Commissioners' process, the respondent to the complaint remains able under section 37.1 of *The Code,* to have the an independent adjudicator (not the same adjudicator that is appointed to decide the merits of the complaint), assess whether or not the remedies included in a respondent's settlement offer are reasonable. If reasonable, the adjudicator must terminate the complaint proceedings without the need for a hearing.

In 2015, 3 respondents requested that their offers be assessed for reasonableness by an independent adjudicator, of which 2 were found to be not reasonable, and 1 was found to be reasonable. If the complaint proceedings are not terminated after the adjudicator issues the decision, the parties often engage in further settlement discussion that can result in a settlement prior to a hearing. These decisions, *Damianakos v. University of Manitoba, Young v. Amsted Canada Inc.,* and *Collette v. St. Adolphe Personal Care Home Ltd. et al.,* respectively, were instrumental in clarifying how human rights remedies differ from remedies in employment-related matters at civil law and are based on the principle of making a person "whole" or putting them in the position they would have been in had they not be discriminated against.

COMPLAINT STATISTICS

Number of requests for information from the public

4083

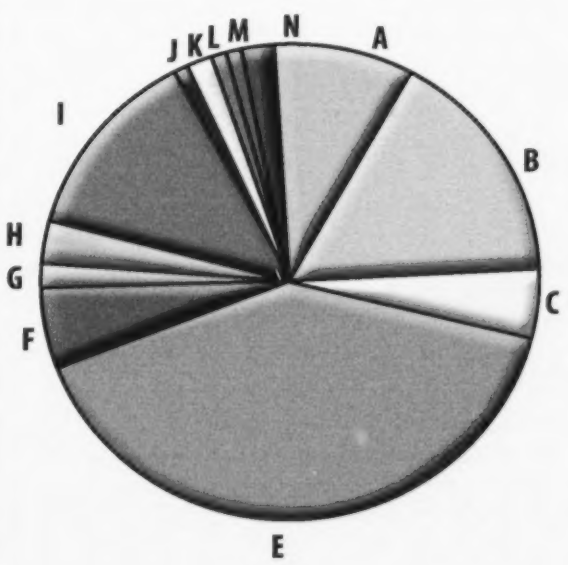
Number of files opened (2015)

342

Number of files Closed (2015)

252

Complaints Registered in 2015 by Protected Characteristic



- A Age (20)
- B Ancestry (42)
- C National Origin (16)
- D Ethnic Origin (0)
- E Disability (133)
- F Marital/Family Status (17)
- G Political Belief (4)
- H Religion (9)
- I Sex (Including Pregnancy) (36)
- J Gender Identity (2)
- K Sexual Orientation (3)
- L Social Disadvantage (2)
- M Source of Income (1)
- N Other (10)

Total Complaints = 295

Formal Complaints Registered in 2015 by Area

Area	Complaints resolved / not pursued prior to registration	Complaints registered (2015)	Complaints resolved / not pursued prior to Commissioner's decision	Complaints considered by Commissioners	Complaints resolved prior to Adjudicator requested	Complaints terminated / Respondent offer found reasonable	Complaints referred to Adjudication	Complaints resolved prior to Adjudication hearing
Services	19	74	20	38	2	2	4	0
Employment	27	205	68	100	8	0	4	5
Contracts	0	1	0	0	0	0	0	0
Housing	11	15	3	6	0	0	0	0
Other	0	0	0	1	0	0	0	0
TOTALS	**57**	**295**	**91**	**145***	**10***	**2***	**8***	**5***

***Complaints may have been registered in years previous to 2015**

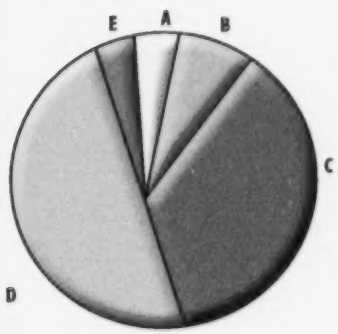
Complaint Activity in 2015

Protected Characteristics	Complaints resolved / not pursued prior to registration	Complaints resolved / not pursued prior to Commissioner's decision	Complaints considered by Commissioners	Complaints resolved prior to Adjudicator requested	Complaints terminated / Respondent offer found reasonable	Complaints referred to Adjudication	Complaints resolved prior to Adjudication hearing
Age	5	6	12	0	0	0	0
Ancestry	12	17	22	1	1	1	0
National Origin	3	4	7	1	0	0	0
Ethnic Origin	1	1	0	0	0	0	0
Disability	24	43	61	8	1	3	4
Marital/Family	5	3	8	0	0	1	1
Political Belief	0	2	2	0	0	0	0
Religion	1	1	4	0	0	0	0
Sex (including Pregnancy)	2	11	20	0	0	1	0
Gender Identity	1	0	2	0	0	1	0
Sexual Orientation	2	0	0	0	0	0	0
Social Disadvantage	0	0	1	0	0	0	0
Source of Income	0	2	1	0	0	0	0
Other	1	1	5	0	0	1	0
TOTALS	**57**	**91**	**145***	**10***	**2***	**8***	**5***

***Complaints may have been registered in years previous to 2015**

Complaints dismissed	**123**
Complaints substantiated	**22**

Files Closed (settled or dismissed) by Allegation



- A Sexual Harassment (6)
- B Other Harassment (20)
- C Reasonable Accommodation (108)
- D Differential Treatment (113)
- E Reprisal (5)

Total Complaints = 252

Allegation	Number of Complaints closed
Sexual Harassment	6
Other Harassment	20
Reasonable Accommodation	108
Differential Treatment	113
Reprisal	5
TOTAL	252

EDUCATION PROGRAMS

Education Programs

One of the foundations of our statutory human rights system is educating the public about general human rights principles as well as about the specific rights and responsibilities in *The Human Rights Code*.

The Commission continues to be a leader in human rights education across the country, using a variety of methods to raise awareness and address emerging issues about human rights. We are often asked to share our youth education resources and information about our seminar program with other agencies.

Seminar Programs

The Commission's regular seminar program continues to be of interest to employers, service providers and landlords, including human resources and industry professionals, lawyers and in-house specialists. In 2015, we offered The Business of Human Rights, Accommodation in the Workplace, Harassment in the Workplace and Mental Health in the Workplace seminars and had almost 200 people attend. The Business of Human Rights and Harassment in the Workplace seminars were also offered for the first time in Thompson as part of a two-part plan to deliver our entire seminar program in Thompson by the end of February 2016.

The Commission continues to respond to a demand for on-site seminars, which allows us to focus the discussion and examples to the needs of the workplace requesting training. In 2015, we offered 15 on-site seminars to workplaces across the province and had over 500 people attend. For example, Manitoba Aboriginal and Northern Affairs in Thompson invited us to provide education around harassment in the workplace to a group of 25 people from very remote Northern communities. In addition, the Commission's Legal Counsel and Chairperson visited University College of the North in The Pas and also offered a seminar to a group of local employers from that area. Finally, for the first time, we visited Nisichawayasihk Cree Nation (Nelson House) and delivered a full day of human rights training which was very well received.

We were excited to host our first online seminar this year. The response was very positive and this is an area of service delivery that the Commission plans to pursue to increase human rights learning to remote areas in Manitoba.

Educating Youth

For the 14th year, the Commission hosted a day-long, youth conference for students. In 2015, over 238 middle-year students and 39 teachers attended, representing 31 Manitoba schools. The DREAM Youth Conference was held in Shilo and Winnipeg. The keynote speaker for both conferences was Scott Heggart, a representative from the "You Can Play" program, which is an organization that encourages gay-straight alliance to stop homophobic conduct in the locker room. Winnipeg Blue Bomber, Teague Sherman, made his first appearance as the Bomber Ambassador for the "You Can Play" program. Scott's personal story of what it was like to be a gay athlete in high school and the Bomber's support of all LGBTQ athletes left students and teachers with a much better understanding of the issues and the need to be mindful of language. Also of interest to the students was service animal trainer, George Leonard, who offered a workshop discussing the emerging role of service animals in Manitoba.

"He was AMAZING! It really showed what a normal kid can do, and how big of an impact a couple people can make. This was my favorite part. Authentic and the students connected with it."

"I think we are doing a good job, but after listening to Scott, I know that we need to do things even better."

The Commission also offered training to all 210 grade 8 students in Mystery Lake School Division in the form of interactive and spirited "Rights Rallies". Students learned about basic human rights principles and *The Human Rights Code* in a positive and motivating environment. One workshop allowed students to demonstrate their knowledge and share in a skit based session where they acted out human rights scenarios. A new session called "Let's Talk About It" put students in smaller groups to discuss gender identity and sexual orientation.

"I liked the "Let's Talk About It" workshop the most because they are showing how all people are equal no matter their sexuality because I am bisexual myself and in that workshop it made me realise that it's okay to be who I am."
- Grade 8 Thompson student.

The Commission was also welcomed into the Otetiskiwin Kiskinwamahtowekamik School in Nelson House to work with their 35 grade 8 students.

Educating the Community and Promoting Human Rights

The Commission frequently attends community and human rights events to raise awareness about *The Human Rights Code* and educate the public about its provisions. In 2015, Commission staff connected with well over 3000 people by participating in various outreach activities across the province. The Commission continues, for example, to deliver a monthly basic human rights presentation to new immigrants and refugees through the Province's Entry Program.

For the 15th year, to celebrate International Human Rights Day, the Commission partnered with the Canadian Human Rights Commission and the Manitoba Association for Rights and Liberties to host the annual Human Rights Commitment Award event, that recognizes individuals who work tirelessly to promote human rights in Manitoba and globally. This year's Sybil Shack Human Rights Youth Award was presented to Christie McLeod – a young advocate from Winnipeg whose advocacy projects ranged from both the local and national human rights scene working in areas that range from Shoal Lake 40 First Nation, to sex trafficking, to women's rights.

In recognition of the culmination of the tremendous work of the Truth and Reconciliation Commission, the Commitment Award was presented to a group of people who have helped to advance equality by working towards reconciliation between Indigenous and non-Indigenous people in Manitoba. The award was presented to Meet Me at the Bell Tower - a grassroots initiative that was initiated by Aboriginal Youth Opportunities in November 2011 and has grown to having weekly meetings that welcome everyone to the Bell Tower in the North End of Winnipeg to come together to discuss important issues.

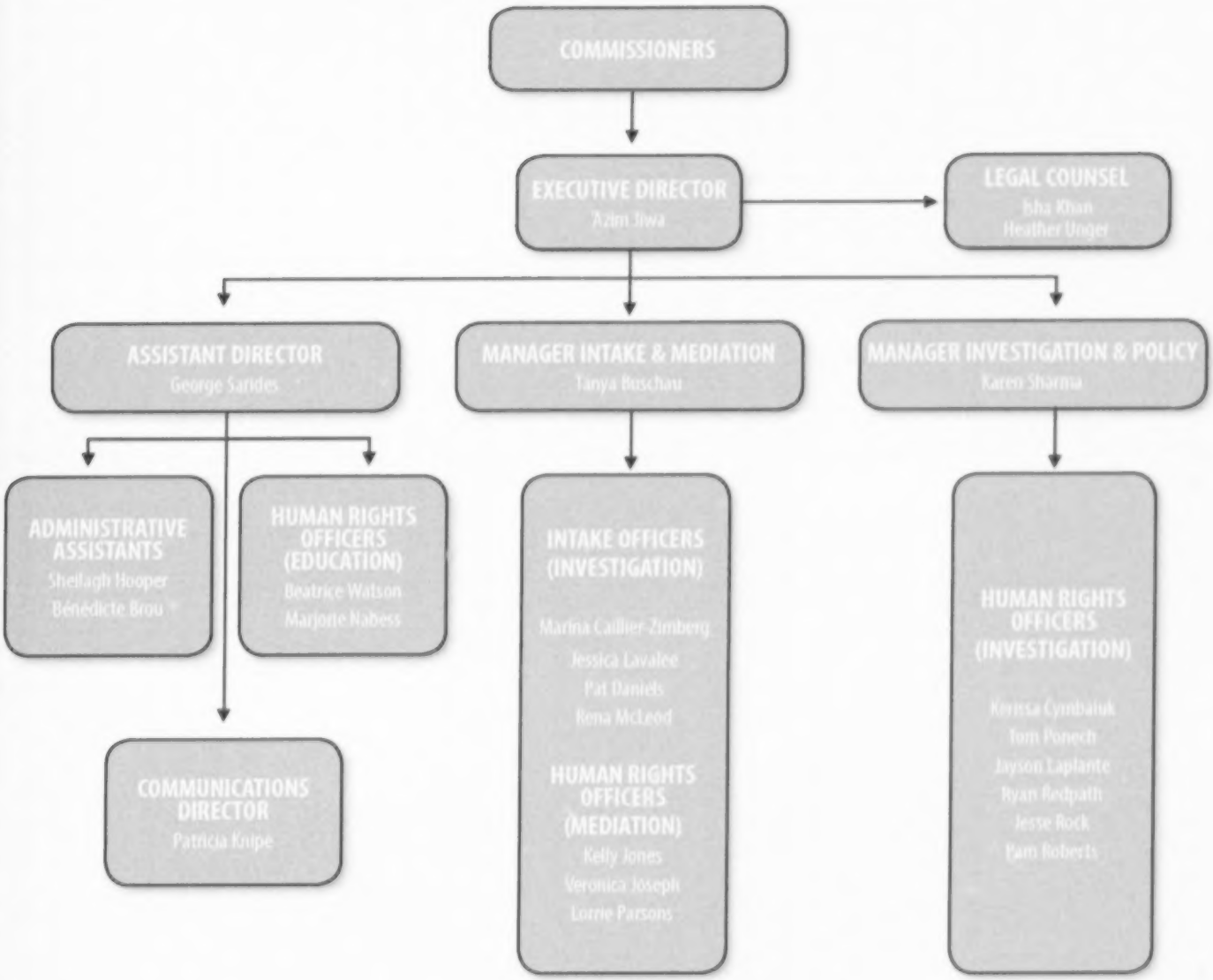
"The feather of the Great Grey Owl, our provincial bird represents Manitoba. Glass is a beautiful medium that is both there but not there as you can see through it. In the sun its true beauty shines. The recipients of these awards have done something very special for our community and they are brilliant in the spotlight cast upon them. Their achievements shine and draw our attention to their beauty."
Kathleen Noëlle Black, artist,

Manitoba artist Kathleen Noëlle Black designed a beautiful glass feather of the Great Grey Owl for the Commitment Award of Manitoba.

Educating through social media

The Commission's website and social and traditional media presence remain the cornerstone of our education work. Information, such as promotion of systemic human rights settlements and decisions are shared with Manitobans via our website; monthly Connections Bulletin that is distributed monthly to almost 1300 people; and on our Facebook page which has a growing number of followers. These dynamic online sources of education allow for the Commission to effectively and efficiently share information so that Manitobans always have access to the most current information with respect to *The Code* and human rights in Canada. Newly released publications, such as the series of Practical Guides related to Service Animals were released in 2015 and are available online. Plans are underway to evaluate and re-develop the Commission's website in 2016 to ensure it remains a primary resource for the public about human rights and the Commission's work.

ORGANIZATION CHART 2015



Chairperson

Yvonne Peters
practices equality rights law in Winnipeg, providing legal consultation and advice. She has a Bachelor of Arts and a Bachelor of Law from the University of Saskatchewan and a Bachelor of Social Work from the University of Regina. She is Vice President of the Canadian Association of Statutory Human Rights Agencies. She is also Co-Chair of the Manitoba Accessibility Advisory Council, Vice-President of the Legal Help Centre and a Board member of the Winnipeg Folk Festival.

Vice-Chairperson

Loretta Ross
has served as legal counsel to numerous First Nation governments and organizations. She obtained her Bachelor of Law from Queens' University and has practiced law for over 20 years, focusing on child and family matters, trust and corporate law, land claims and residential school claims. She is a member of the Hollow Water First Nation in Manitoba. She has sat on numerous community boards and currently is on the board of Marymount Inc., Families First Foundation and the Manitoba Civil Service Commission. She strives to balance her work with her commitment to husband, four children and grandson.

Commissioners

Leo Aniceto
is a staff lawyer at Agassiz Community Law Centre, Family Unit, Legal Aid Manitoba. He previously practiced as a solo practioner for approximately five years helping clients in the areas of family law, criminal law, child protection and real estate. He is an active member of the Filipino community and enjoys helping community members with legal issues. Leo has three children.

Karen Banuga
is the Executive Assistant, Vice President People & Planning, Copyright Officer, Access and Privacy Coordinator and Records Officer for Assiniboine Community College. She has a Bachelor of Arts Degree from Brandon University and is a member of the Islamic Community. Karen is a strong advocate of women's rights. She loves to travel and finds it helpful in understanding other cultures and belief systems. Karen is married with four children.

John Burchill
is a Civilian Manager with the Winnipeg Police Service. He has a Bachelor of Arts in Criminal Justice from Athabasca University and a Bachelor of Law from the University of Manitoba. He was a police officer for 25 years, six of which were spent as a supervisor of the Hate Crimes Team. Prior to re-joining the Police Service he worked as a Crown Attorney with Manitoba Justice and a Risk Manager with the University of Manitoba. He has taken training in hate crimes and human rights through Dalhousie University, the University of Manitoba, the California State University (Santa Barbara) and the United Nations Institute for Training and Research.

BOARD OF COMMISSIONERS

Commissioners

André Doumbè
is the Market Information Officer at the Market Analysis Group, Grain and Oilseeds Division for Agriculture Canada. He studied Business Administration and was Purchasing Manager at Champs Food Systems from 1986 to 1998. He was born in Cameroon and has over twenty years of grassroots, community involvement. He is President of the African Communities of Manitoba Inc. (ACOMI), member of the Manitoba Immigration Council and volunteers at United Way of Winnipeg as a member of the education Committee. He is past President of Sous le Baobab, a Cameroonian grassroots organization in Winnipeg.

Diane Dwarka
is a retired librarian and passionate community volunteer. She has been President of the Council of Caribbean Organizations of Manitoba, Community Legal Education Association, Manitoba Association for Multicultural Education, the Women's Inter-Church Council of Winnipeg, Chair of Red River College Alumni, and many others. As a lay member, Diane has served all four courts of the United Church of Canada. Among the many awards she has received in recognition for her work is a Public Legal Education Award, the YM-YWCA Women of Distinction Award, the Red River Distinguished Alumnus Award, the Premier's Award for Volunteerism, the B'nai Brith Human Rights Award, was 2014 Folklorama Ambassador General and was honoured and humbled to receive an eagle feather.

Joan Hay
works at the Ma Ma Wi Chi Itata Centre Inc. as a Community Helper/ Emergency Services Worker and at the Native Women's Transition Centre as a Residential Support Worker. Joan co-authored a book on community development titled *In Their Own Voices: Building Urban Aboriginal Communities*, and is the Past President of the Spence Neighbourhood Association. She has lived in Winnipeg's inner city for over thirty years and has been involved with many inner city boards and committees. Joan is of Ojibwe/ Dakota descent from Waywayseecappo First Nation in Manitoba.

Anne Lacquette
is the Chair of Northern Association of Community Councils Western Region and a member and Elder of the First Nations, Métis, and Inuit Cancer Control Board. She has resided in the community of Mallard for over 52 years. She is an active member of the local school committee and on the Mallard Council, serving as Deputy Mayor and Mayor. She is past Chair of the Provincial Aboriginal Advisory Committee and has served for nine years on the Parkland Regional Health Authority Board. She was born and raised in Ebb and Flow, Manitoba where she received her education. She raised seven children with her late husband, Norman.

Donn Short
is a professor at Robson Hall, Faculty of Law, University of Manitoba. He is the author of *Don't Be So Gay: Queers, Bullying, and Making Schools Safe*. He is the recipient of a research Fellowship from the Law Foundation of British Columbia, a Social Sciences Humanities Research Council Standard Research Grant, as well as other academic honours, awards and prizes. At Robson Hall, he founded the group Outlaws and is the founding Editor-in-Chief of the Canadian Journal of Human Rights. He has written a number of dramatic works and is currently at work on two more books - one dealing with bullying in high schools and another assessing sexual orientation and religion-based rights claims.
Dr. Short is a member of the education committee of Eagle Canada Human Rights Trust.

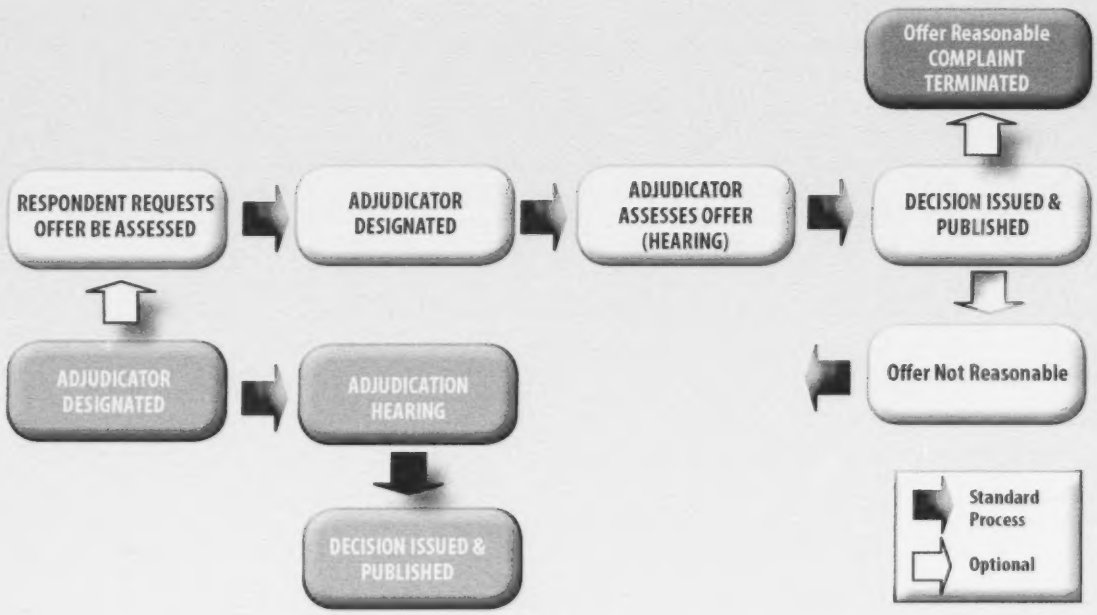
HUMAN RIGHTS ADJUDICATION PANEL

Sherri Walsh - Chief Adjudicator
Lawrence Pinsky
Robert Dawson
M. Lynne Harrison
Peter Sim
Dan Manning

The Human Rights Adjudication Panel is an administrative tribunal comprised of 6 Adjudicators who are appointed by the Government of Manitoba to adjudicate complaints of discrimination made under *The Human Rights Code* (*"The Code"*). One member of the Panel is designated as the Chief Adjudicator. The Panel is independent from the Manitoba Human Rights Commission.

Adjudicators are practising lawyers who have experience and expertise in human rights matters. They conduct public hearings to determine whether the *Code* has been contravened, as alleged in the complaint. If they find *The Code* had been breached, they have the authority to make remedial orders to compensate for: injury to the complainant's dignity, self-respect and feelings; financial losses; and expenses incurred or benefits lost by reason of a contravention. They can also make orders to ensure a respondent's future compliance with *The Code* including requiring the development of policies, human rights education and training and affirmative action programs.

Adjudication hearings may be conducted in English or French. They typically last between 3 and 8 days and can be held in all areas of the Province according to what is convenient for the parties.



MESSAGE FROM THE CHIEF ADJUDICATOR

I am very pleased to provide this message on behalf of the Human Rights Adjudication Panel. Although the *Code* requires that the Commission deliver an Annual Report to the Minister which covers the activities of both the Commission and the Adjudication Panel, this is the first time that the Adjudication Panel has been given an opportunity to report directly on its activities.

This is an important step towards highlighting the independent relationship that exists between the Commission and the Adjudication Panel. Although both entities are created under the *Code*, each entity performs a separate and distinct role in the delivery of human rights justice in Manitoba. Independence is an essential feature of the relationship between the two entities.

The purpose of a system for administering justice in human rights law is to protect the dignity and agency of every individual in society and to remove the barriers that prevent individuals from exercising choice about how they live their lives – barriers such as discrimination and marginalization.

A system for administering human rights justice is also a basic component of the rule of law. As the world sees all too often, a failure to uphold the rule of law can result in a failure to protect the most vulnerable members of society. Legal protection of human rights is, therefore, essential to the wellbeing of every community.

The preamble to the *Code* says that: "Manitobans recognize the individual worth and dignity of every member of the human family." This is the fundamental principle which underlies human rights legislation in Manitoba.

Implicit in this principle is the right of all individuals to be treated in all matters solely on the basis of their personal merits and to be accorded equality of opportunity with all other individuals. As the *Code* identifies, to protect this right it is necessary to restrict unreasonable discrimination against individuals, including discrimination which is based on stereotypes or generalizations.

These are the legal requirements which we as adjudicators must keep in mind when determining whether the provisions of the *Code* have been breached, in each matter that comes before us.

Canada's Chief Justice, Beverly McLachlin, has often spoken about the benefits that result from a system of justice which is delivered by administrative tribunals such as the Adjudication Panel pointing out that such tribunals provide specialized resolutions, ensure greater flexibility and efficiency and provide a less formal and more rapid forum for public hearings than that which is offered by the Court system.

The Adjudication Panel performs an important role in the justice system and I am proud of the work that is carried out by the the individual members of this Panel.

As Panel members we work to provide fair, accessible determinations of the matters we hear, recognizing that our decisions can have a fundamental effect on the lives of the parties who appear before us.

In reaching our decisions we strive to promote consistency in the application of the *Code* while at the same time being responsive to the individual facts of a matter and the need to foster an evolving understanding of the law.

Recent Amendments to the *Code*

Section 37.1 – Assessment of Settlement Offers

The *Code* was amended in 2012 to include a provision that allows an adjudicator to assess the reasonableness of a settlement offer which is made by a respondent to a complaint.

Under the section, a respondent who makes a settlement offer after an adjudicator has been designated to hear the matter, may request that the Chief Adjudicator designate a different adjudicator to determine whether the settlement offer is reasonable. In determining the reasonableness of the offer, the adjudicator must consider whether the offer approximates the remedy an adjudicator hearing the complaint would award, assuming that the allegations set out in the complaint are proven and having regard to the underlying remedial purpose of the *Code*.

Since coming into effect this section has been applied in 6 decisions. In 2 of these decisions, the adjudicators found that the offer was reasonable and ordered that the adjudication be terminated if the complainant did not accept the offer. In the other 4 decisions, 3 of which were issued in 2015, the adjudicators found they could not determine whether the offer was reasonable. In each of those cases, however, the parties ultimately went on to resolve their disputes themselves, without proceeding to a full adjudication hearing.

Role of the Chief Adjudicator

At the same time that the *Code* was amended to include section 37.1, the legislation was amended to create the position of Chief Adjudicator. The purpose of creating this position was to enhance the Adjudication Panel's independence from government. Prior to the creation of a Chief Adjudicator, whenever the Human Rights Commission determined that a matter should proceed to adjudication, it asked the Minister of Justice to designate an adjudicator to hear the matter. Now the Commission communicates with the Chief Adjudicator to request designation of an adjudicator. The names of members of the Adjudication Panel are set out on a list and the Chief Adjudicator designates an adjudicator by proceeding through the list on a rota basis, taking care to ensure that a given member is not in any conflict of interest.

Statistics about the work of members of the Adjudication Panel for the year 2015:

The Commission referred six complaints to adjudication. Of those, 3 settled, 1 subsequently settled in 2016 and 1 is scheduled to be heard in the fall of 2016. The 6th matter is being kept in abeyance due to personal circumstances of the parties.

Members of the Adjudication Panel issued six decisions. Of those: 2 were final decisions on the merits – 1 relating to discrimination on the basis of sex and the other to discrimination on the basis of disability; 1 decision involved a procedural issue and 3 related to determinations as to the reasonableness of settlement offers, under section 37.1

Going Forward

Although each member of the Adjudication Panel operates out of his or her respective office, in the last few years members of the Panel have shown a willingness to meet as a group to discuss ways to offer more accessible, consistent and efficient processes to the parties.

As is the case in the courts and other aspects of the justice system, we are seeing an increasing number of self-represented parties appear before us.

Our goal for the next year is to come up with a set of procedural guidelines which will offer the parties clear expectations of the procedure to be followed in hearings generally. We hope this will enhance the parties' ability to participate meaningfully in adjudicative proceedings.

I was recently invited to attend a forum for Human Rights Tribunal Chairs sponsored by the Canadian Human Rights Tribunal. This gave me a wonderful opportunity to exchange best practices and updates on the law with my counterparts across the country.

I look forward to the next year as the Adjudication Panel continues to deliver human rights justice in a fair, effective and accessible manner, in furtherance of promoting the dignity and agency of every member of our society.

Sherri Walsh
Chief Adjudicator

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